

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

19

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

APRIL TERM, 1910.

No. 2136.

721

No. 14, SPECIAL CALENDAR.

UNITED STATES ON RELATION OF JOSEPH E. WALCH,
APPELLANT,

vs.

WILLIAM H. DELACY, JUDGE OF THE JUVENILE COURT
OF THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

LIBRARY
FILED MARCH 16, 1910.

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA
APRIL TERM, 1910.

No. 2136.

No. 14, SPECIAL CALENDAR.

UNITED STATES ON RELATION OF JOSEPH E. WALCH,
APPELLANT,

vs.

WILLIAM H. DELACY, JUDGE OF THE JUVENILE COURT
OF THE DISTRICT OF COLUMBIA, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

	Original.	Print
Caption	a	1
Petition for writ of certiorari.....	1	1
Rule to show cause.....	5	4
Marshal's return.....	6	4
Rule to show cause.....	6	4
Marshal's return.....	7	4
Return of respondent.....	7	5
Appendix to response.....	12	7
Opinion of the court.....	13	8
Rule to show cause discharged; petition dismissed; judgment	18	10
Memorandum: Appeal noted in open court.	18	10
Appeal bond approved and filed	18	10
Motion to require certification of record	19	11
Motion to require certification of record overruled.....	22	13
Directions to clerk for preparation of transcript of record	23	13
Clerk's certificate.....	25	14

In the Court of Appeals of the District of Columbia.

No. 2136.

UNITED STATES on Relation of JOSEPH E. WALCH, Appellant,
vs.
WILLIAM H. DE LACY, Judge of the Juvenile Court of the District of
Columbia.

a Supreme Court of the District of Columbia.

At Law. No. 52221.

UNITED STATES on Relation of JOSEPH E. WALCH, Petitioner,
vs.
WILLIAM H. DE LACY, Judge of the Juvenile Court of the District of
Columbia, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of
Columbia, at the City of Washington, in said District, at the times
hereinafter mentioned, the following papers were filed and proceed-
ings had in the above entitled cause, to wit:—

1 *Petition for Writ of Certiorari.*

Filed Dec. 15, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 52221.

UNITED STATES on Relation of JOSEPH E. WALCH, Petitioner,
vs.
WILLIAM H. DE LACY, Judge of the Juvenile Court of the District of
Columbia, Defendant.

To the Honorable Justices of the Supreme Court of the District of
Columbia:

Your petitioner respectfully represents:

1. That he is a citizen of the United States and a resident of

Landover in the State of Maryland, where he has resided for nearly the full and uninterrupted space of three years last past.

2. That he is employed at the Bureau of Printing and Engraving, in the city of Washington and District of Columbia, and makes daily trips between his home in Maryland and his place of employment in the District of Columbia.

3. That on, to wit, February 5, 1909, and notwithstanding the residence of your petitioner in the State of Maryland, your petitioner was arrested on a warrant from the Juvenile Court of the District, issued on an information sworn to by his wife, Eva Walch, falsely charging him with having on January 1, 1909, in the said District

and within the jurisdiction of said Juvenile Court, being
2 then and there the husband of said Eva Walch and the father of one certain child, Wymbert Walch, under the age of sixteen years, to wit; six months, the said wife and child being in destitute and necessitous circumstances, did then and there without just cause, desert and willfully neglect and refuse to provide for the support and maintenance of said wife and child, etc. and was locked up and wrongfully detained in one of the cells at the First Police Precinct until he finally secured bond for his appearance at the trial in said Juvenile Court.

4. And your petitioner further says that at the hearing in said Juvenile Court he attempted to show that he was an actual resident of the State of Maryland and not within the jurisdiction of said court, also that he was not in any sense guilty of the charge, his wife having left his bed and board, without just cause, taking their infant child with her, on December 27, 1908, and has ever since failed, refused, and still refuses to return to him, although he was then and still is ready and willing to provide for her and his child under his own roof, but that both of his said pleas were disregarded by the Honorable William H. De Lacy, judge of said Juvenile Court, upon the theory, as he said, that the employment of the defendant at the Bureau of Printing and Engraving in said District, gave his court jurisdiction over the person of the defendant, and notwithstanding his domicil and actual residence in the State of Maryland, your relator was ordered on February 26, 1909, by the Justice of said Juvenile Court, to pay thirty (\$30.00) dollars per month for the support of his said wife and child.

5. Your petitioner avers that the action of said Juvenile
3 Court, as set forth above, was entirely without authority of law, the said court being without jurisdiction in such cases, and, your relator being then and now an actual bona fide resident of the State of Maryland and not subject to punishment for the alleged offense charged as being in violation of the laws of the District of Columbia, this assumption of jurisdiction by the judge of said Juvenile Court over the protest of your petitioner, was an arbitrary act entirely in excess of his powers and the judgment rendered is absolutely null and void.

6. That your said petitioner through his attorney herein, arranged with the Justice of said Juvenile Court, on December 2, 1909, thereafter filing a formal motion as directed by said court, for a fur-

ther inquiry into the facts in relation to the above proceedings, with a view to having same set aside and declared to be of no effect, and that at that time the hearing was set for December 13, 1909, at 4:30, P. M.; that when said motion was called up for hearing the Justice of said Juvenile Court, very promptly adjudged your relator to be in contempt for having failed to pay the amount due on December, 3, 1909, under its order of February 26, 1909, refused to hear the motion to set said order aside until your relator had purged himself of contempt by payment of the sum due under said order, and threatened to send your relator to jail, forthwith, unless he paid, or agreed to pay, the sum alleged as due. Whereupon, and in order to avoid the disgrace, humiliation and annoyance of being sent to jail, he agreed to pay said sum of thirty dollars (\$30.00) on December 16, 1909, but that he now refuses and will ever refuse, unless directed by this Honorable Court so to do, to pay any further money in obedience to said order.

7. Your petitioner also avers that at the hearing on said motion, referred to in the foregoing paragraph, the said Justice indicated an unwillingness to set aside or modify his order of February 26, 1909, notwithstanding the non-residence of the defendant, unless the defendant could show that at the time the information was sworn to by Eva Walch she was not actually a resident of the District of Columbia and he continued the hearing until Friday, December 17, 1909, in order that evidence might be offered on that point.

Wherefore, the premises considered, your petitioner prays:

1. That the United States writ of certiorari may issue to said William H. De Lacy, judge of said Juvenile Court, defendant herein, requiring him to certify to this court all the papers and records in his custody or under his control relating in anywise to the arrest, as aforesaid, of this petitioner, or any other proceedings had, or undertaken, thereunder.

2. That upon return of said writ, aforesaid, the said alleged judgment of said William H. De Lacy, judge of said Juvenile Court and all and every action in relation to, or in connection therewith, may be quashed and annulled by the judgment of this Court, and respondent may be directed to cancel and set aside all proceedings undertaken to be had thereon.

3. And for such other and further relief as to the Court may seem meet.

5 JOSEPH E. WALCH, *Relator*.

I. Q. H. ALWARD,
Attorney for Relator.

I do solemnly swear that I have read the foregoing petition by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and the facts stated upon information and belief, if any I believe to be true.

JOSEPH E. WALCH, *Relator*.

Subscribed and sworn to before me the 14 day of December 1909.

[SEAL.]

CHARLES R. HARBAN,
Notary Public of D. of C.

Rule to Show Cause.

Filed Dec. 16, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 52221.

UNITED STATES on Relation of JOSEPH E. WALCH, Petitioner,
 vs.
 WILLIAM H. DE LACY.

Upon consideration of the petition filed herein for a writ of certiorari, it is this 16th day of December, 1909 ordered that the respondent show cause if any he has, on Monday, December 20th, 1909, at ten o'clock A. M. why said writ of certiorari should not issue as prayed in said petition, provided a copy of this rule be
 6 served upon said respondent on or before December 16, 1909.
 WRIGHT, *Justice*.

Marshal's Return.

William H. De Lacy not to be found.
 December 16, 1909.

AULICK PALMER, *Marshal*.*Rule to Show Cause.*

Issued Dec. 18, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 52221.

UNITED STATES on Relation of JOSEPH E. WALCH, Petitioner,
 vs.
 WILLIAM H. DE LACY, Judge of the Juvenile Court of the District of Columbia, Defendant.

Upon consideration of the petition filed herein praying for the issuance of a writ of certiorari, it is this 17th day of December A. D. 1909, ordered that the respondent show cause, if any he has,
 7 on Monday December 20th, 1909 at 10 A. M., before me why said writ of certiorari should not issue as prayed in said petition.

WRIGHT, *Justice*.*Marshal's Return.*

Served copy of the within rule to show cause on William H. De Lacy personally.
 December 18, 1909.

AULICK PALMER, *Marshal*.

Return of Respondent.

Filed Dec. 21, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 52221.

UNITED STATES ex Rel. JOSEPH E. WALCH, Petitioner,

vs.

WILLIAM H. DE LACY, Judge of the Juvenile Court of the District
of Columbia, Respondent.

Now comes William H. De Lacy, Judge of the Juvenile Court of
the District of Columbia, and for return to the rule to show
8 cause issued in the above entitled case, respectfully shows:

1. Your respondent shows in answer to paragraph 1 of
the petition herein, that so far as the pleadings on file in the Juve-
nile Court show, the defendant was at the time of the trial of this
case and still is in the District of Columbia, within the meaning of
the law covering the non-support of children.

2. Your respondent does not deny the allegations of paragraph 2
of said petition.

3. Your respondent admits that on or about February 5, 1909,
the petitioner, Joseph E. Walch, was arrested on a warrant from the
Juvenile Court; and for more specific information as to the time of
the filing of these papers in this case and as to the contents of such
papers, your respondent refers to copy of the docket entry and of
the information and other papers attached hereto and made a part
hereof.

4. Your respondent shows in answer to the allegations of para-
graph 4 of said petition, that upon consideration of the writ of cer-
tiorari issued out of this Honorable Court this court has authority
to determine only upon an inspection of the record whether or not
the Juvenile Court had jurisdiction of the offense charged in the in-
formation, and is not entitled to enter into a consideration of the
merits of the case as it appeared in the Juvenile Court.

Your respondent shows that no formal plea to the jurisdiction was
filed in the Juvenile Court at the time of the trial of this case
therein, and that no exceptions were taken at the time of the
9 ruling of the Judge of the Juvenile Court.

Your respondent admits that the petitioner in this case was
ordered on, to wit, February 26, 1909 to pay thirty dollars per month
for the support of his said wife and child.

Your respondent further shows that on or about December 3,
1909, when this case was called for hearing in the Juvenile Court,
counsel representing the wife in open court stated the willingness
of the wife to return to the bed and board of the husband if such
home was provided for her and the child away from the residence
of the parents of the husband.

5. Your respondent shows in answer to paragraph 5 of said petition, that under the acts of Congress approved March 19, 1906, and March 23, 1906, the Juvenile Court was given jurisdiction over all offenses in which were involved the non-support of children; and your respondent shows that the non-support of a child is a continuing offense, and as such cognizable by this court, whenever the defendant is within the jurisdiction of the court.

6. Your respondent shows, in reply to paragraph 6 of said petition, that he is ready and willing at all times to hear motions for re-consideration of such cases as may be necessary, but that no defendant is entitled to come into court and plead when there is a valid order standing on the records of the court with which the defendant has failed and refused without due cause to comply.

Your respondent further shows that in spite of the fact that the defendant agreed to pay the sum of thirty dollars on December 16, 1909, in order to purge himself of a contempt of the
10 payment of the same due under a proper order of the court, he has failed to make said payment, and still refuses to do so or pay any further money in obedience to said order. On December 13, 1909 at the hearing of this case in the Juvenile Court, on the petition for a modification of the original order to pay thirty dollars per month the attention of the Court was called to the fact that the last instalment of the amount ordered to be paid by the Court was due and unpaid, and thereupon your respondent refused to consider any petition for the modification of the original order. The defendant thereupon promised to make payment of the sum of thirty dollars on or before December 16, 1909, and upon this understanding the case was continued until December 17, 1909, for the hearing upon the petition for the modification of the original order. On December 16, 1909, no payment was made in accordance with the order of the Court, and on December 17, when the case was called for hearing, the defendant in spite of his promise to be present failed to appear in court.

Your respondent further shows that until said order has been reversed or modified this defendant is not entitled to plead that such order was improvidently passed, in view of his refusal to obey the same.

7. Your respondent shows, in reply to paragraph 7 of said petition, that the matters therein set forth are stated in such an indefinite and uncertain manner that your respondent is unable to make reply thereto; and reference is hereby made to a copy of the docket entries and record as indicating the action of the court upon
this case.

11 Wherefore the premises considered, your respondent asks that the petition for the writ of certiorari be denied, with costs.

WM. H. DE LACY,
*Judge of the Juvenile Court of the
District of Columbia.*

DISTRICT OF COLUMBIA, ss:

I, William H. De Lacy, being first duly sworn on oath do depose and say, that I am Judge of the Juvenile Court of the District of Columbia; that I have read the foregoing return by me subscribed and know the contents thereof; that the matters and facts therein stated of my own knowledge are true, and those stated on information and belief I believe to be true.

WM. H. DE LACY,

Subscribed and sworn to before me this 20th day of December A. D. 1909.

[SEAL.]

JOSEPH HARPER,
Clerk, Juvenile Court, D. C.

12

Appendix to Response.

No. 5981.

In the Juvenile Court of the District of Columbia.

Filed Dec. 21, 1909.

December Term, 1909.

UNITED STATES

vs.

JOSEPH E. WALCH.

Information for Non-support of Wife and Minor Child.

Defendant arraigned: February 8, 1909.

Continued to February 1, 1909, February 26, 1909.

Plea Guilty.

Sentence: February 26, 1909.—Proceedings suspended on condition defendant pay wife Thirty dollars per month beginning March 2, 1909.

December 7, 1909.—Motion to set aside Order of Payments filed. Continued to December 17.

December 17, 1909.—Remittances to wife in view of the decision of the Court of Appeals in the case of United States vs. West. Owing to dependency of infant payments to continue as to child subject to the hearing upon petition filed by defendant.

Owing to absence of defendant adjourned to December 18, 1909.

December 18, 1909.—Rule issued to show cause why a Writ of certiorari should not issue. Cause continued pending rule.

December 21, 1909.

13 I hereby certify under the Seal of this Court that the foregoing is a true copy of the record of the proceedings had in the Juvenile Court in the above-entitled case.

[SEAL.]

JOSEPH HARPER,
*Deputy Clerk, Juvenile Court,
District of Columbia.*

Opinion of the Court.

Filed Dec. 23, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 52221.

UNITED STATES ex Rel. JOSEPH E. WALCH
vs.
WILLIAM H. DE LACY.

Hearing on Rule to Show Cause Why a Writ of Certiorari Should
Not Issue.

The petition of the relator shows that he was arrested upon a warrant issued by the Juvenile Court on an information charging that in the District of Columbia he did desert and wilfully neglect and refuse to provide for the support and maintenance of his wife and child, aged less than 16 years; that the court ordered him to
14 pay \$30 a month for the support of his wife and child; that the monthly installment falling on December 3, 1909 was not paid; for which the Juvenile Court adjudged him guilty of contempt in failing to pay it, and was about to send him to jail forthwith; that to avoid the sentence he agreed to pay the installment on December 16th; that he now refuses to pay either it or any other money in accordance with the order of that court. It appears from the return to the rule that the record of the Juvenile Court shows that the relator pleaded guilty to the charge; that record further shows:

"February 26, 1909 proceedings suspended on condition defendant
"pay wife thirty dollars per month, beginning March 2, 1909. De-
"cember 7, 1909, motion to set aside order of payments filed. Con-
"tinued to December 17. December 17, 1909. Remitter as to wife
"in view of the decision of the Court of Appeals in the case of United
"States vs. West. Owing to dependency of infant payments to con-
"tinue as to child subject to the hearing upon petition filed by de-
"fendant. Owing to absence of defendant adjourned to December
"18, 1909. December 18, 1909. Rule issued to show cause why a
"writ of certiorari should not issue. Cause continued pending rule."

Whatever in addition the petition may show, yet so much as is above recited seems to me to control the disposition of the case. Relator claims that the order of the Juvenile Court is void, as he says, because the Juvenile Court was without jurisdiction to make an order requiring the father to provide for the child's support. That that court is without jurisdiction to require a husband to support his wife is ruled in *United States v. West*, 37 W. L. R. 737. The question at bar was not made by that case, but it was there pointed out that the act of March 23, 1906,

15 "creates a new criminal offense punishable within the District
"of Columbia."

That new offense was for a husband to fail to support his wife in destitute and necessitous circumstances; and nothing was able to be found in that act or in any other which vested the Juvenile Court with jurisdiction of that particular crime. Although the same act makes it an offense for

"any person without just excuse to desert or wilfully neglect or refuse to provide for the support and maintenance of his or her minor children under the age of 16 years in destitute or necessitous circumstances."

yet this later offense was not "new" to the act of March 23, 1906; it had existed before, and certain courts had already been vested with jurisdiction concerning it.

The act of March 3, 1901 (31 Stat. 1095) amongst other things provides,

"SEC. 4. That any person within the District of Columbia, of sufficient financial ability who shall refuse or neglect to provide for any child under the age of fourteen years, of which he or she shall be the parent or guardian, such food, clothing, and shelter as will prevent the suffering and secure the safety of such child, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to punishment by a fine of not more than one hundred dollars, or by imprisonment in the workhouse of the District of Columbia for not more than three months, or both such fine and imprisonment."

"SEC. 5. * * * and if said evidence tends to show that such child has a father or a mother either of whom is able to contribute toward the support of such child * * * but fails to neglect so to do, then the proper prosecuting officer shall file in the Police Court of the District of Columbia an information charging such father or mother or both with such failure or neglect and upon conviction thereof the said court shall require the father or mother of such child or both such father or mother to contribute by stated payments * * * toward the support of such child
"* * *"

16 The especial importance of the foregoing quotation is to point out that the act vested the Police Court of the District of Columbia with jurisdiction to hear and determine proceedings against parents in such cases important because the jurisdiction conferred upon the Police Court by the act of March 3, 1901, largely determines the jurisdiction which reposed in the Juvenile Court by virtue of the act of March 19, 1906; this latter act provides,

"such Juvenile Court may hereafter concurrently with the Criminal Court, have and exercise all the powers and jurisdiction conferred by said last mentioned act (March 3, 1901) upon the Police Court of the District of Columbia in the case of parents or guardians who shall refuse or neglect to provide food, clothing, and shelter for any child under the age of fourteen years."

The act of 1906 further provides

"that the court (Juvenile Court) may impose conditions on any person, found guilty under said last mentioned act (March 3, 1901) and so long as such person shall comply therewith to the satisfaction of the court the sentence imposed may be suspended * * *."

The consideration of the phraseology of these enactments affords me no room to debate about their meaning or to hesitate in concluding that the Juvenile Court possesses jurisdiction to hear and determine the matter at its bar in so far as the father was proceeded against for failure to support the child.

It is interesting to observe that the act of March 3, 1901 defines both a distinct crime with its penalty in Sec. 4, above quoted, and aside from the prosecution of the technical crime by the public, contemplates as well (Sec. 6) proceedings in contempt to enforce the maintenance of the child, aside from the administration of punishment for the crime; and that there is in the act of March 23, 1906 (which creates the "new offense" of wilfully neglecting to support a wife) nothing which indicates a legislative intention to divest the Juvenile Court of any jurisdiction which it possessed at the time.

Relator makes some contentions about the facts of the case, but these are inappropriate to the proceedings at bar; it is not the function here of the writ of certiorari to accommodate de novo a trial upon the merits in order to inquire whether the court below fell into errors in determining questions of fact; so long as the face of the record shows the proceedings to have been lawful and within the jurisdiction of the court, there ought to be no interference here. If it is to be claimed that errors intervened, errors of a nature such that a bill of exceptions is required in order for the record to show them, and of such a nature that an appeal is necessary for their correction, the appeal provided for by the act of March 19, 1906 must be invoked; that remedy is not for administration in this court. The rule is discharged and the petition dismissed.

WRIGHT.

18 Supreme Court of the District of Columbia.

THURSDAY, *December 23, 1909.*

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * *

At Law. No. 52221.

UNITED STATES on Relation of JOSEPH E. WALCH, Petitioner,
vs.

WILLIAM H. DE LACY, Judge of the Juvenile Court of the
District of Columbia, Respondent.

Now come here as well the petitioner by his Attorney Mr. I. Q. H. Alward, as the respondent by his Attorney, Mr. D. W. Baker, U. S.

Attorney; whereupon this case comes on to be heard upon the petition, rule to show cause, and answer of respondent, and having been argued and submitted it is by the Court ordered that said rule to show cause be, and it is hereby discharged, the petition dismissed, and that the respondent recover against said petitioner the costs of his defense, to be taxed by the Clerk, and have execution thereof.

Memoranda.

December 24, 1909.—Appeal noted in open Court to Court of Appeals.

January 17, 1910.—Appeal bond approved and filed.

19 *Motion to Require Certification of Record.*

Filed Jan. 25, 1910.

In the Supreme Court of the District of Columbia.

At Law. No. 52221.

UNITED STATES on Relation of JOSEPH E. WALCH, Plaintiff,
vs.

WILLIAM H. DE LACY, Judge of the Juvenile Court of the
District of Columbia, Defendant.

Now comes the plaintiff by I. Q. H. Alward, his attorney, and moves this Honorable Court to require the defendant to certify to this court the motion to dismiss the cause against this plaintiff in the Juvenile Court, a copy of which said motion is attached hereto and made a part hereof, it appearing that said motion is not now a part of the records certified herein, and, in the event said motion is not now to be found among the records of said Juvenile Court he prays that the copy attached hereto may, in lieu thereof, be made a part of the records of said Juvenile Court herein.

I. Q. H. ALWARD,
Attorney for Plaintiff.

J. S. Perry, Esq., Attorney for Defendant.

DEAR SIR: Please take notice that I shall call up the foregoing for hearing Friday, January 28, 1910.

I. Q. H. ALWARD,
Attorney for Plaintiff.

20 DISTRICT OF COLUMBIA, ss:

I. Q. H. Alward, being first duly sworn, deposes and says that he visited the Juvenile Court on December 2, 1909, in the interest of relator herein, and while there he examined the papers and records in the case against Joseph E. Walch, #5981, and found among said papers a typewritten paper, affiant believes, identi-

cal with the one attached hereto supported by the affidavit of T. Howard Duckett which said paper affiant believes to be a material and important part of the record of said Juvenile Court in its case against the relator, and, if, for any cause, there is a diminution of the record of said Juvenile Court, the copy of said paper attached hereto should be made a part of the records of said Juvenile Court, herein, in lieu of the paper writing formerly constituting a part of the records.

I. Q. H. ALWARD.

Subscribed and sworn to before me the 25 day of January, A. D. 1910.

J. R. YOUNG,
By H. BINGHAM, *Ass't Clerk*.

DISTRICT OF COLUMBIA, ss:

Personally appeared before me, a Notary Public of the District of Columbia aforesaid, T. Howard Duckett and made oath in due form of law that he was the counsel for Joseph B. Walch in the
21 case of the United States vs. Walch in the Juvenile Court, tried some time in last February, and that at the call of the case he moved that the Defendant be discharged because of want of jurisdiction in the Court and the case was continued by agreement for the purpose of putting a motion in written form and to prepare argument, and upon its again being called the motion in writing, of which the attached is a carbon copy, was handed Judge De Lacy by the affiant, but the same was never argued but a judgment by consent entered.

Given under my hand and official seal this twenty-second day of December, 1909.

JOHN L. FLETCHER,
Notary Public.

[SEAL.]

T. HOWARD DUCKETT.

In the Juvenile Court of the District of Columbia.

U. S.

vs.

JOSEPH E. WALCH.

To the honorable the judge of said court:

The defendant, by Marion Duckett & Son, his attorneys, move that he be discharged because of the want of jurisdiction in this court to try the matters and things involved:

In that the defendant is now, and for the two years last past has been a resident of Prince George's County, Maryland, and
22 that the offense charged, if there be any offense, which this defendant denies, was committed in said State and County, and further, in that the complaining witness Mrs. Eva Walch is

now residing in Prince George's County, said State; separate and apart from her husband, but even if the said complaining witness be residing in the D. C. temporarily her residence is entirely fictitious and for the purpose of having this court assume jurisdiction, and that her residence in the District of Columbia, whether temporary or permanent can not confer jurisdiction upon this court.

Supreme Court of the District of Columbia.

FRIDAY, *January 28, 1910.*

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * *

At Law. No. 52221.

UNITED STATES on Relation of JOSEPH E. WALCH, Petitioner,
vs.

WILLIAM H. DE LACY, Judge of the Juvenile Court of the
District of Columbia, Defendant.

Upon consideration of the petitioner's motion filed herein, to require the defendant to certify to this Court the motion to dismiss the cause against the petitioner in the Juvenile Court, it is ordered that said motion be, and it is hereby overruled.

23 *Directions to Clerk for Preparation of Transcript of Record.*

Filed Jan. 31, 1910.

In the Supreme Court of the District of Columbia.

At Law. No. 52221.

UNITED STATES on Relation of JOSEPH E. WALCH, Petitioner,
vs.

WILLIAM H. DE LACY, Judge of the Juvenile Court of the
District of Columbia, Defendant.

The Clerk will please prepare record for the Court of Appeals in the above entitled cause, as follows:

The petition for writ of certiorari.

Rules to show cause and the returns thereon.

The answer of respondent to rule to show cause.

Copy of docket entries of Juvenile Court (Appendix to answer).

The written opinion of the Honorable, Mr. Justice Wright.

Judgment.

Motion to require part of record of Juvenile Court to be certified,

the affidavit in support, and the motion to dismiss proceedings in the Juvenile Court and the affidavit of Mr. T. Howard Duckett.

The order of Mr. Justice Wright in respect to above motion.

Notation of appeal.

24

Mem. of Appeal Bond.

Designation.

I. Q. H. ALWARD,
Attorney for Relator.

January 31, 1910.—Nothing further in the record.

F. SPRIGG PERRY,
Assistant U. S. Attorney, D. C.

Memorandum.

March 7, 1910.—Time to file record extended to March 16, 1910, inclusive.

25 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 24, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 52221, at Law, wherein United States on relation of Joseph E. Walch is Petitioner and William H. De Lacy, Judge of the Juvenile Court of the District of Columbia, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 1st day of March, 1910.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2136. United States on relation of Joseph E. Walch, appellant, vs. William H. De Lacy, judge of the Juvenile Court of the District of Columbia. Court of Appeals, District of Columbia. Filed Mar. 16, 1910. Henry W. Hodges, clerk.

Addition to Record Per Stipulation of Counsel.

In the Court of Appeals of the District of Columbia, April Term,
A. D. 1910.

No. 2136.

U. S. ex rel. JOSEPH E. WALCH, Appellant,
vs.

WILLIAM H. DE LACEY, Judge of the Juvenile Court, Appellee.

It is this 29th day of March, A. D. 1910, agreed by and between counsel for the appellant Joseph E. Walch, and counsel for the appellee, William H. De Lacey, Judge of the Juvenile Court, that the attached papers shall be printed as part of the record in the Court of Appeals of the District of Columbia, these papers having been used in the hearing of this cause in the court below, by agreement of counsel.

I. Q. H. ALWARD,
Attorney for Appellant.

DANIEL W. BAKER,
P.

*Attorney of United States in and for
the District of Columbia.*

[Endorsed:] No. 2136, Court of Appeals D. C. U. S. ex rel. Joseph E. Walch, Appellant, vs. William H. De Lacey, Judge of the Juvenile Court, Appellee. Stipulation.

In the Juvenile Court of the District of Columbia, February Term,
1909.

No. 5981.

UNITED STATES

vs.

JOSEPH E. WALCH.

Information for Nonsupport of Wife and Minor Child.

Defendant arraigned: February 8, 1909. Mr. T. Howard Duckett appearing as Attorney for the Defendant.

Plea — guilty.

Judgment — guilty.

Continued to February 17, 1909. February 17, 1909, continued to February 26, 1909. February 26, 1909, Proceedings suspended on condition that Defendant pay wife \$30 per month for one year, through the Clerk of the Court, beginning March 2, 1909.

December 7, 1909.—Motion to set aside payments as ordered filed. Motion set for a hearing December 13, 1909.

December 13, 1909.—Hearing on Motion continued to December 17, 1909.

December 17, 1909.—Remitter as to wife in view of the decision of the Court of Appeals in the case of the United States vs. West. Owing to dependency of infant payments to continue as to child subject to hearing of the petition filed by defendant. Adjourned to December 18, 1909, by reason of the absence of defendant.

December 18, 1909.—Rule issued to show cause why a writ of certiorari should not issue. Case continued pending hearing upon rule.

FEBRUARY 4, 1910.

I hereby certify under the Seal of this Court, that the foregoing is a true copy of the record of the proceedings had in the Juvenile Court in the above-entitled case.

[Seal of the Juvenile Court of the District of Columbia.]

JOSEPH HARPER,
Clerk Juvenile Court, District of Columbia.

In the Juvenile Court of the District of Columbia, February Term,
A. D. 1910.

DISTRICT OF COLUMBIA, ss:

Edward H. Thomas, Esquire, Corporation Counsel in and for the District of Columbia, who, for the said United States, prosecutes in this behalf, by F. H. Stephens, Esquire, his Assistant, comes here into Court, at the District aforesaid, on the Eighth day of February in the year of our Lord one thousand nine hundred and nine in this said Term, and for the said United States, gives the Court here to understand and be informed, on the oath of one Eva Walch that one Joseph E. Walch late of the District aforesaid, on the first day of January in the year of our Lord one thousand nine hundred and nine and on divers other days and times since said date and the date of filing this complaint, with force and arms, at the District aforesaid, and within the jurisdiction of this Court, being then and there the husband of Eva Walch and the father of one minor child Wymbert E. Walch under the ages of sixteen years, to wit: six months of age did, without just cause, wilfully neglect to provide for the support and maintenance of said wife and child, said wife and child being in necessitous circumstances and domiciled in the District of Columbia, against the form of the statute in such case made and provided, and against the peace and Government of the United States of America.

Whereupon, the said Corporation Counsel, who, in this behalf, prosecutes for the said United States, in manner and form as aforesaid, prays the consideration of the Court here in the premises, and that due proceedings may be had against the said Joseph E. Walch

in this behalf to make him answer to the said United States touching and concerning the premises aforesaid.

EDWARD H. THOMAS,
Corporation Counsel in and for
the District of Columbia.
 By F. H. STEPHENS,
His Said Assistant.

Personally appeared Eva Walch before me this eighth day of February A. D. 1909, and being duly sworn according to law doth declare and say that the facts as set forth in the foregoing information are true.

[Seal of the Juvenile Court of the District of Columbia.]

(Signed)

JOSEPH HARPER,
Clerk Juvenile Court of the
District of Columbia.

True copy.

Test:

_____,
Clerk Juvenile Court, D. C.

[Endorsed:] No. 5981. United States vs. Joseph E. Walch, Bureau of Engraving and Printing. Non-Support of Wife and Minor Child. Mr. T. Howard Duckett appearing as Attorney for defendant. Witnesses: Eva Walch, Laurel, Md., Mrs. ——— Lawson, 1419 F st., N. W., Frank Fitzhugh, Allie Lanham, R. W. Wells. February 26, 1909. Proceedings suspended. Wife to pay \$30 per month for one year, through Clerk of the Court, beginning March 2, 1909. December 7, 1909, Motion to set aside order of Payments filed. Motion set for a hearing December 17, 1909, at 4.15 P. M. December 17, 1909, Remitter as to wife in view of the decision of the Court of Appeals in the case of the U. S. vs. West. Owing to dependency of infant payments to continue as to child subject to the hearing upon petition filed by defendant. Adjourned to December 18, 1909, by reason of absence of the defendant. December 18, 1909, Rule to show cause why a writ of certiorari should not issue issued. Case continued pending suit. Filed Feb'y 8, 1909. Joseph Harper, Clerk, Juvenile Court, D. C.

In the Juvenile Court of the District of Columbia.

Aff. No. 2456.

DISTRICT OF COLUMBIA,

County of Washington, ss:

To the Marshal of the District of Columbia, Greeting:

Whereas Eva Walch hath upon oath before me, Judge of the Juvenile Court of the District of Columbia, declared that on the first day of January A. D. 1909, at the County aforesaid, one Joseph

Walch being then and there the husband of Eva Walch and the father of one certain child Wymbert Walch under the age of sixteen years, to wit: six months *years* of age, the said wife and child being in destitute and necessitous circumstances, did then and there, without just cause, desert and willfully neglect and refuse to provide for the support and maintenance of said wife and said child against the form of the statute in such case made and provided, and against the peace and Government of the United States of America.

You are therefore hereby commanded to take the said Joseph E. Walch and bring him before the said Juvenile Court forthwith to answer said charge.

Witness the Hon. William H. De Lacy, Judge of the Juvenile Court of the District of Columbia, and the seal of said Court, this 5th day of February, the year of our Lord one thousand nine hundred and nine.

[Seal of the Juvenile Court of the District of Columbia.]

JOSEPH HARPER,
Clerk of the Juvenile Court, D. C.

True copy.

Test:

JOSEPH HARPER,
Clerk Juvenile Court, D. C.

[Endorsed:] — Precinct. No. —. United States vs. Joseph E. Walch, "Pressman" in the Bureau of Engraving and Printing. Warrant for Non-Support of Wife and Child. Cepi.: —. Witnesses: Eva Walch, 13th and N. Y. Ave., N. W., A. M. Lawson, Mrs. A. M. Lawson, 1419 F st., N. W., Frank Fitzhugh, 13 and N. Y. Ave., office of Mr. Wills, Allie Lanham, Bureau of Engraving and Printing, R. W. Wells, 13 and N. Y. Ave., N. W.

In the Juvenile Court of the District of Columbia.

No. 5981.

UNITED STATES, Plaintiff,
vs.
JOSEPH E. WALCH, Defendant.

Now comes the defendant, by I. Q. H. Alward, his attorney, and moves this Honorable Court to vacate and set aside its order, of February 26, 1909, herein, requiring this defendant to pay to Eva Walch thirty (\$30) dollars per month, upon the ground:

1. The defendant, being a resident of the State of Maryland, and, therefore, beyond the jurisdiction of this Honorable Court, was not subject to its orders.

2. That said defendant was coerced into agreeing that the court should pass the order, and, having been procured by duress, his consent thereto is void and of no effect.

3. That the defendant could not by any act of his, short of actual residence in the District of Columbia, vest the court with jurisdiction over his person.

4. That the said Eva Walch has not been an actual bona fide resident of the District of Columbia but has resided at Laurel, Maryland, almost continuously since she left her husband's bed and board, without just cause, on December 27, 1908, and, consequently, even if she were able to establish a separate domicile so as to effect the rights of this defendant and vest in the court jurisdiction over his person, which she could not do, her residence in Washington was a mere pretense and entirely without foundation in fact.

5. If by any reason and fair construction of the law it can be said that this court had, or has, jurisdiction over the person of this defendant, then, and without intending to recognize any such jurisdiction, it is contended that the amount required to be paid was greatly in excess of the actual and reasonable requirements of the said Eva Walch, this defendant being then and now ready and willing to support, under his own roof, both she and their child, and the amount required to be paid should be materially reduced.

I. Q. H. ALWARD,
Attorney for Defendant.

True copy.

Test:

JOSEPH HARPER,
Clerk, Juvenile Court, D. C.

[Endorsed:] No. 5981. United States vs. Joseph E. Walch. Motion to set aside Order of Payment. Filed Decem. 7, 1909. Joseph Harper, Clerk, Juvenile Court, D. C. I. Q. H. Alward, Attorney for Defendant.

[Endorsed:] Court of Appeals, D. C. No. 2136. U. S. ex rel. Joseph E. Walch, Appellant, vs. William H. De Lacey, Judge of the Juvenile Court, Appellee. Addition to Record per Stipulation of Counsel. Court of Appeals, District of Columbia. Filed Mar. 29, 1910. Henry W. Hodges, Clerk.